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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------------|---------------------|------------------|
| 10/656,027 | 09/04/2003 | Barry Byron | 33535/US | 8490 |
| 7590 11/02/2005 | | | | |
| Christopher R. Hilberg, Esq. Dorsey & Whitney LLP Intellectual Property Department 50 South Sixth Street, Suite 1500 Minneapolis, MN 55402-1498 | | EXAMINER DESAI, HEMANT | | |
| | | ART UNIT 3721 PAPER NUMBER | | |

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,027

Applicant(s)

BYRON ET AL.

Examiner

Hemant M. Desai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/18/2005 (R.C.E.).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23,25-33 and 35-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23,25-33 and 35-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/25/2005 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 23, 25, 29-31, 33, 35, 39-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent (8-258851).

Japanese Patent discloses a sealing apparatus for sealing bag, comprising an elongated sealing member (21, fig. 1), and an elongated receiver portion (22, fig. 1) having at least one engagement aperture (23, fig. 3) to receive the sealing member, the receiver portion having an opening extending along a length of the receiver portion (see figs. 1-3) the opening being bracketed by first and second ridges (the meeting point of the receiver portion 23 and the lug 71, fig. 8) and providing access to the engagement aperture, and the receiver portion having lugs (71, fig. 8) that project generally

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outwardly from the receiver portion and downwardly in the direction of the opening of the receiver portion (rotate the fig. 8 by 90° in the anticlockwise direction) and the lugs are provided at each location that is proximate to the first and second ridges and spaced apart from the opening providing a gripping surface (see arrows in fig. 8), which meets all the claimed limitations

Regarding claim 33, it has been held that to be entitled to patentable weight in the method claims, the recited structure limitations therein must affect the method in a manipulative sense, and not to amount to the mere claiming of use of a particular structure. *Ex parte Pfeiffer*, 1962 C.D. 408 (1951). Therefore, the limitation in claim 33 "the opening...gripping surface", lines 5-11, has not been given patentable weight since the limitation does not affect the method in a manipulative sense. Japanese Patent discloses method for sealing a re-sealable bag (see fig. 1), the method comprising providing an apparatus having an elongated sealing member (21, fig. 1) and an elongated receiver portion (22, fig. 1), the elongated receiver portion having at least one engagement aperture (see fig. 8) to receive the elongated sealing member and having an opening extending along a length of the receiver portion, the receiver portion having lugs (71, fig. 8) providing a gripping surface, positioning a portion of the re-sealable bag proximate to the engagement aperture, positioning the sealing member proximate to the portion of the re-sealable bag and the engagement aperture, and pressing the sealing member into the engagement aperture of the receiver portion with the portion of the re-sealable bag interposed between the sealing member and the receiver portion (see fig. 1).

Regarding claims 25 and 35, wherein the elongated sealing member has a circular cross-section (see figs. 6-7) and the engagement aperture of the receiver portion has an approximately circular cross-sectional shape (see figs. 6-7) that is configured to receive the sealing member.

Regarding claims 29 and 39, the coupling member is flexible that couples the sealing portion to the receiver portion (see figs. 1-7).

Regarding claims 30-31, 39, Japanese Patent discloses the sealing portion (21) and receiving portion (22) are formed of a resilient polymeric material (see translation page 6, paragraphs 10 and 11).

Regarding claims 40-42, Japanese Patent discloses a method for sealing a bag (see fig. 1) using an apparatus (20, fig. 1) having an elongated sealing member (21) and an elongated receiver portion (22) having at least one engagement aperture (23) configured to receive the sealing member (see fig. 1), the method comprising positioning a portion of a resealable bag (fig. 1) proximate to the engagement aperture, positioning the sealing member proximate to the portion of the resealable bag and the engagement aperture, and pressing the sealing member into the engagement aperture of the receiver portion with the portion of the resealable bag interposed between the sealing member and the receiver portion (see fig.1), which meets all the claimed limitations.

Regarding claim 41, positioning a portion of a resealable bag proximate to the engagement aperture further comprises positioning an opening portion of the bag proximate to the engagement aperture (see fig. 1).

Regarding claim 42, pressing the sealing member into the engagement aperture of the receiver portion further comprises closing the resealable bag to form a hermetic seal therein (see fig. 1).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 26, 32 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent in view of U.S. Application No. US 2003/0188510.

Japanese Patent, as mentioned above, discloses all the claimed limitations, except for a handle. However, U.S. Application teaches a handle (16, figs. 1-3) to facilitate holding and engaging rod portion (sealing portion) into the clamp (receiver) (see page 1, paragraph 3, lines 9-11). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the handle as taught by U.S. Application No. 10/223647 in the bag sealing apparatus of Japanese Patent to facilitate holding and engaging rod portion (sealing portion) into the clamp (receiver).

Regarding claim 32, U.S. Application teaches that the clamp and receiver are made of flexible metallic materials (see page 1, paragraph 11, lines 1-6). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention

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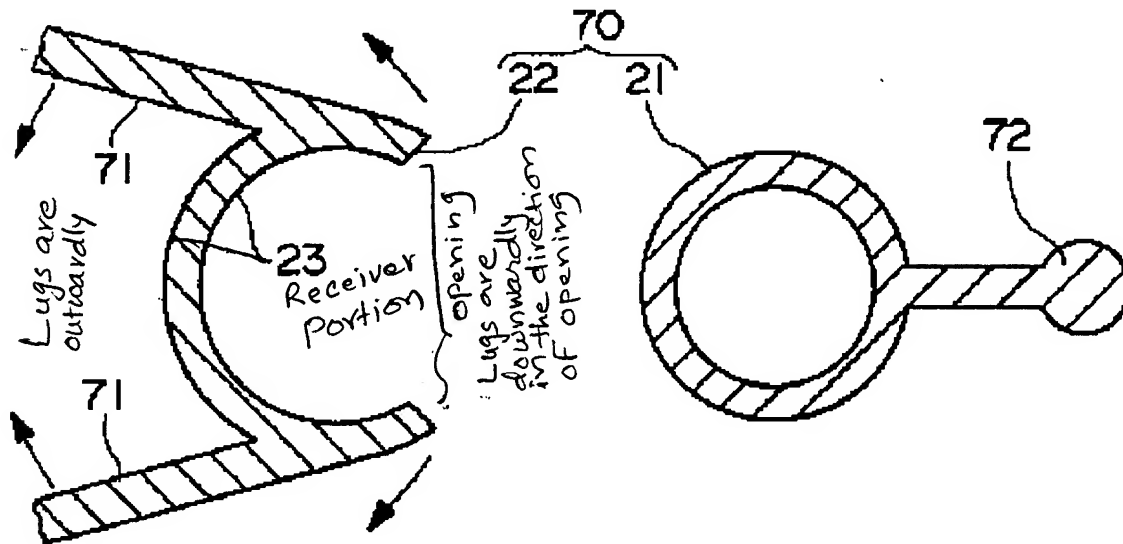
was made to having provided the clamp and receiver are made of metallic materials as taught by U.S. Application in the bag sealing apparatus of Japanese Patent.

6. Claims 27-28 and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent (8-258851).

Japanese Patent discloses an opening that extends along a length of the sealing portion (see figs. 1-4, 6-8) and a lanyard (61, fig. 7) coupled to the receiver portion (22, fig. 7). Japanese Patent does not disclose expressly that the lanyard extends through the opening of the sealing portion. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to extend the lanyard through the opening because Applicant has not disclosed that by extending the lanyard through the opening provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the lanyard (61) attached to the sealing portion and receiving portion as disclosed in the Japanese Patent or the claimed lanyard extends through the opening of the sealing portion because both lanyards perform the same function to prevent lost of either the receiving portion or sealing portion and thus to prevent the sealing apparatus from becoming unusable. Therefore, It would have been an obvious matter of design choice to modify Japanese Patent to obtain the invention as specified in claims 27-28 and 37-38.

Response to Arguments

7. Applicant's arguments filed 10/18/2005 have been fully considered but they are not persuasive. Japanese Patent ('851) does disclose that lugs project outwardly from the receiver portion and downwardly in the direction of the opening of the receiver



portion. Further the lugs (71) are spaced apart from the opening because they blend in to the arc before the two end points of receiver portion.

Further, it not clear form the claims weather applicant intends to claim the embodiment of Fig. 2A or Fig. 2B. Japanese Patent ('851), as mentioned above, discloses the embodiment of Fig. 2A. If applicant intends to claim the embodiment of fig. 2B, than applicant is respectfully advised to claim the geometric locations of ridges and lugs by providing some geometric reference points. Phrases like "generally outwardly" and "downwardly" are very broad terms.

In response to applicant's argument regarding the handle not extending upwardly, note that the handle of U.S. Application No. 2003/0188510 does extend

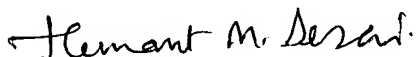
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upwardly by the amount of the thickness of the handle. Furthermore, Japanese Patent ('851) also discloses that the handle (72) is extending outwardly and upwardly.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M. Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 7:00 AM-5: 30 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hemant M Desai
Examiner
Art Unit 3721

HMD